



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 09/925,433 | 08/10/2001 | Hesham M. Abdel-Gawwad | 032513-007.001 | 4106 |

7590

09/29/2003

Teresa Stanek Rea
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

EXAMINER

NGUYEN, VI X

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/29/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|---|--|
| Office Action Summary | Application No. 09/925,433 | Applicant(s) ABDEL-GAWWAD, HESHAM M. | |
| | Examiner Victor X Nguyen | Art Unit 3731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,6,8-22 and 25-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5,7,23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4,5</u> | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3731

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species II in group I, claims 3-7 and 23-24 in Paper No. 9 is acknowledged. Claims 1-2, 8-22 and 25-27 are withdrawn from further consideration pursuant to 37 CFR 1.142 (b) as being drawn to a non-elected species, there being no allowable generic or linking claim.

Applicant elected to prosecute claim 6, however, claim 6 is being canceled in Paper No.

7. Therefore, claim 6 is also withdrawn from consideration.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3-5, 7 and 23-24 are rejected under 35 U.S.C. 102 (b) as being anticipated by Barbut et al. (US. 5,769,816).

Barbut et al show in figures 1, 4 and col. 3, lines 14-44, col. 4, lines 42-48, a device having all the limitations of claim 3, including: an elongated shaft (20); a self-expanding frame (30) positioned at the distal end of the shaft (20). The frame includes a plurality of self-expanding sections and at least one joint (fig. 1). The self-expanding sections are foldable about one of the at least one joint when in a biased, collapsed condition.

Art Unit: 3731

Regarding claims 4-5 and 7, wherein the frame (30) includes a closed distal end and further includes a rod (50) extending through the shaft lumen. The rod is movable in the lumen; wherein the frame (30) sections are detachable from the shaft; and wherein the rod (50) extends through the shaft lumen. The rod is moveable in the lumen.

Regarding claims 23 and 24, wherein the device further includes a plurality of collapsing joints (61) so that the frame (30) can be folded up; wherein each joint includes an extending leaf spring having a V-shaped orientation and a biased flat orientation (figs 1 and 6);

Claims 3-5, 7 and 23-24 are rejected under 35 U.S.C. 102 (e) as being anticipated by Kerr. (US. 5,941,896).

Kerr shows in figures 1, 4, 7 and col. 4, lines 54-67, a device having all the limitations of claim 3, including: an elongated shaft (28) has at least one lumen (30) extending therethrough; a self-expanding frame (14) positioned at the distal end of the shaft (28). The frame includes a plurality of self-expanding sections and at least one joint (fig. 1). The self-expanding sections are foldable about one of the at least one joint when in a biased, collapsed condition.

Regarding claims 4-5 and 7, wherein the frame (14) includes a closed distal end and further includes a rod (12) extending through the shaft lumen. The rod is movable in the lumen; wherein the frame (14) sections are detachable from the shaft; and wherein the rod (12) extends through the shaft lumen. The rod is moveable in the lumen.

Regarding claims 23 and 24, wherein the device further includes a plurality of collapsing joints (26) so that the frame (14) can be folded up; and wherein each joint includes an extending leaf spring having a V-shaped orientation and a biased flat orientation (figs 4 and 7).

Art Unit: 3731

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,146,396 to Konya

U.S. Pat. No. 6,258,115 to Dubrul

U.S. Pat. No. 6,585,748 to Jeffree

U.S. Pat. No. 5,122,136 to Gulielmi

U.S. Pat. No. 5,928,260 to Chin

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen

Examiner

Art Unit 3731

Vn

✓

September 16, 2003


MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700